THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A. NOS. 820 AND 681 OF 2006

W.A. NOS. 820 OF 2006:

Date: 08.11.2006

Between:

D. Chandersekhara Babu.

… Appellant/Petitioner

and

1. Sathavahana Grameena Bank, Karimnagar and five others.

… Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A. NOS. 820 AND 681 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Writ Appeal No. 820 of 2006 is filed by the petitioner, aggrieved by the order in W.P. No. 12805 of 2005 dated 21.10.2005, in so far as the selections, for promotion to Grade III officers posts, which took place in June 2005 were directed not to be disturbed. Writ Appeal No. 681 of 2006 is filed by the 1st respondent in the writ petition, (hereinafter referred to as the respondent bank), aggrieved by the very same order in so far as the bank was directed to forward the case of the petitioner for being considered for promotion, since all the existing vacancies in Grade III officers posts had already been filled up.

The learned single judge, by order in W.P. No. 12805 of 2005 dated 21.10.2005, while directing the respondents to consider the case of the petitioner for promotion to the post of Grade-III Officer, held that the selections of the unofficial respondents, who were selected by a duly constituted selection committee in June 2005, should not be disturbed, since no malafides were attributed to the selection committee.

Pursuant to the orders passed in W.P.M.P. No. 18497 of 2005 in W.P. No. 12805 of 2005 dated 11.07.2005, unofficial respondents 2 to 6 were brought on record. R-7 in the writ petition was impleaded pursuant to the orders passed in W.P.M.P. No.

19969 of 2005 in W.P. No. 12805 of 2005 dated 11.11.2005.

Facts, in brief, are that the petitioner joined as a branch manager in the 1st respondent bank on 27.10.1984. He was promoted as a Scale II Officer with effect from 01.12.1995. The petitioner was suspended from service on 10.11.1998 for certain irregularities alleged against him. He submitted his explanation thereto on 05.04.1999. The respondent issued letter dated 22.12.1999 wherein certain other irregularities, alleged to have been committed by the petitioner, were detailed. Consequent thereto a charge memo was issued vide proceedings dated 08.05.2000. An enquiry officer was appointed, the enquiry proceedings commenced on 22.06.2000, the enquiry report submitted on 11.08.2004 and a show cause notice dated 25.04.2005 was issued proposing imposition of punishment. The petitioner submitted his explanation thereto on 05.05.2005. Subsequently another show cause notice dated 30.05.2005 was issued proposing to modify the punishment and thereafter, vide proceedings dated 08.06.2005, the petitioner was imposed the punishment of stoppage of one increment without cumulative effect for a period of three years.

The respondent bank issued circular dated 08.06.2005 proposing to select candidates for promotion as Officers Scale III. While the petitioner's case was not considered, six other officers were selected for promotion as Officers Scale III in the interviews held on 17th and 18th June, 2005. According to the respondents, in view of the debarment policy, for officers inflicted with minor or major punishment, under the service conditions of its Sponsor bank i.e., State Bank of Hyderabad and as he was inflicted with a

minor punishment on 08.06.2005, the rigour period of which continued for three years till 07.06.2008, the petitioner was ineligible to be considered for promotion and, it was only after expiry of rigour period and after the appeal preferred by him to the Board of Directors of the respondent bank was allowed, could his case be considered for promotion.

The learned single judge, in the order under appeal, held that, while no employee had a right to be promoted, he had a right to be considered for promotion. The Learned judge noted that there was no specific rule, governing the 1st respondent bank, for not considering the case of a candidate for promotion when the punishment imposed on him was in force. The Learned judge held that, while the service conditions of the sponsor bank ie., State Bank of Hyderabad envisaged debarment of officers, who were inflicted with minor or major punishments, and provided that such persons were not entitled to be promoted during the rigour period of the punishment imposed, these conditions were inapplicable to the respondent bank as there were specific rules which governed the service conditions of its employees i.e., the "Officers and Employees Service Regulations, 2001". The Learned judge held that, in these regulations, there was no provision which prohibited the management from giving promotion to an officer-employee who was undergoing punishment. The Learned judge noted that there was no master and servant relationship between employees of the respondent bank and the sponsor bank and that the instructions issued by the sponsor bank, so as to affect the service conditions of its employees, could not be taken into consideration unless the employees of the respondent bank agreed for its applicability. The Learned judge rejected the petitioner's contention that punishment

should be imposed from the date of suspension ie., in the year 1998 and held that such retrospective punishment was impermissible. The Learned Judge held that the punishment could not be modified in writ proceedings and since an appeal was pending, against the order of punishment, it was for the appellate authority to take note of and consider the appeal in accordance with law. The Learned judge relied on the judgments of the Apex Court in **Union of India Vs. Krishnan**[1] and **Union of India Vs. K.V. Janakiraman**[2] to hold that, since denial of promotion was not a penalty but was only a necessary consequence of the employee's conduct, the action of the respondents in not sending his name for interview could not be said to be arbitrary or illegal and simply because some other persons were considered for promotion, inspite of the currency of the punishment, the same could not be a ground to consider the case of the petitioner on par with them in view of the fact that there was some misconduct on the part of the employee and such a person could not be given promotion during the currency of the penalty/punishment imposed. The Learned judge noted that, since the service conditions of the respondent bank, did not prohibit consideration of an employee for promotion during the currency of the punishment, nothing prevented the bank from forwarding the name of such employee, who was undergoing punishment, to the selection committee for promotion duly recording the fact of misconduct and also the punishment and that the respondent bank could not take its own decision in such circumstances. The Learned judge held that the respondent bank ought to have forwarded the name of the petitioner, with all the remarks, as it was for the selection

committee ultimately to decide whether the petitioner or any employee was fit for promotion to the next higher cadre. The Learned judge held that the petitioner was unjustly denied consideration and participation in the interview and that the action of the respondent bank, in not forwarding the name of the petitioner for interview, was arbitrary and illegal. The learned judge, while allowing the writ petition and directing the respondents to consider the case of the petitioner for promotion to the post of Officer Grade-III, did not disturb the selection which took place in June, 2005 in view of the fact that the unofficial respondents were selected by a duly constituted selection committee.

In his affidavit, filed in W.A. No. 681 of 2006, the petitioner would submit that the appeal preferred by him, against the order of punishment of stoppage of one increment without cumulative effect for a period of three years, was allowed by the Board of Directors of the respondent bank on 07.12.2005 and the punishment was modified to that of "censure". Petitioner would rely on the circular issued by the National Bank for Agriculture and Rural Development, (NABARD), dated 03.12.1999, wherein it was clarified that the penalty of reprimand in a single instance could not be a ground to debar a person from promotion unless there were some other adverse features in the service record. Petitioner would submit that one of the candidates, who was selected pursuant to the impugned notification i.e., Sri M. Prabhakar died in an accident on 07.05.2006 and that considering his case, as per the directions in W.P. No. 12805 of 2005 dated 21.10.2005, would not unsettle the entire promotions as there was a clear vacancy. The respondent bank, on the other hand, would seek to rely on the government circular dated 23.04.1998 wherein

a greater role was given to the sponsor bank in the management of regional rural banks. In terms of the said circular dated 23.04.1998 sponsor banks have been empowered to exercise full managerial and operation control and to be directly responsible for aiding other banks sponsored by them.

Sri Ghanta Rama Rao, learned Counsel for the petitioner, would submit that the order under appeal, in directing that the case of the petitioner be considered for promotion without disturbing the selections held in June 2005, would only result in the petitioner, even if he is now promoted as a Grade III officer, becoming junior to his erstwhile juniors, in the higher post of officer Grade III. Learned Counsel would submit that, subsequent to the order of the learned single judge, the appeal preferred by the petitioner was allowed by the Board of Directors of the 1st respondent bank and the punishment of stoppage of one increment without cumulative effect for a period of three years was modified to that of "censure". According to the Learned Counsel since the order of the disciplinary authority has merged in the appellate order, it is only the appellate order which remains in force and the petitioner must be deemed only to have been imposed the punishment of "censure". Learned Counsel would submit that "Censure" is the least of the minor penalties and is similar to "Reprimand" which NABARD, in its circular dated 03-12-99, has held not to be a bar for promotion and that the petitioner is entitled to be considered for promotion and to be placed above, his erstwhile juniors, in the higher post of officer Grade III.

Learned Standing Counsel for the respondent bank would contend that, in view of the circular of the Government of India dated 23.04.1998 and since the sponsor bank has been given a

greater role including full managerial control over the regional rural banks sponsored by it, the debarment policy applicable to the sponsor bank was applicable to the regional rural banks also. Reference is made to the fact that the sponsor bank i.e., State Bank of Hyderabad had prescribed a debarment policy and a sealed cover procedure. While the penalty of censure is not a bar for promotion under the said debarment policy, under the sealed cover procedure the first sealed cover need not be given effect to and the remaining covers, if any, shall be duly given effect to, one by one. With regards withholding of increments, while under the said debarment policy of the sponsor bank the employee is not eligible to be considered for promotion for the period the increments are withheld, under the sealed cover procedure, the sealed cover is not to be acted upon. Reference is made to the State Bank of India debarment policy dated 18.02.1991, and to its sealed cover procedure, whereunder in case of imposition of a minor penalty of censure the first sealed cover shall not be given effect to and the subsequent sealed covers, if any, shall be opened in a chronological order and the findings of the promotional committee are required to be acted upon. However under the debarment policy, censure is not a bar for consideration of the officer for promotion whereas in case of withholding of increments, with or with or without cumulative effect, the person is ineligible for promotion for the period the increments are withheld.

Before the rival contentions are examined, it is necessary to note the relevant statutory and other applicable provisions. The respondent bank is a regional rural bank established under the Regional Rural Banks Act, 1976. Under Section 3(1) the Central

Government may, if requested to do so by the Sponsor Bank, by notification in the Official Gazette, establish in a State or a Union territory, one or more regional rural banks with such name as may be specified in the notification and specify the local limits within which each regional rural bank shall operate. Under Section 3(2), every regional bank shall be a body corporate with perpetual succession and a common seal. Under Section 3(3), it is the duty of the sponsor bank to aid and assist the regional rural bank, sponsored by it, by subscribing to the share capital of such regional rural bank, recruitment and training of personnel during the first five years of its functioning and provide such managerial and financial assistance as may be mutually agreed upon between the sponsor bank and the regional rural bank. Under Section 8(1) the general superintendence, direction and management of the affairs and business of a regional rural bank shall vest in a board of directors who may exercise all the powers and discharge all the functions which may be exercised by the regional rural bank. Under Section 17(1), the regional rural bank may appoint such number of officers, and other employees, as it may consider necessary or desirable for efficient performance of its functions and may determine the terms and conditions of their appointment and service. Section 29(1) enables the Central Government, after consultation with the Reserve Bank and the Sponsor Bank, and by notification in the Official Gazette, to make rules for carrying out the provisions of the Act. Section 30 empowers the Board of Directors of the regional rural bank, after consultation with the sponsor bank and the Reserve Bank, and with the previous sanction of the Central Government, to make regulations not inconsistent with the provisions of the Act and the rules made

thereunder.

In exercise of the powers conferred under Section 30, the respondent bank, (Sathavahana Grameena Bank), framed the Officers & Employees Service Regulations. Under Regulation 5(2) thereof all appointments in the Bank shall be made in accordance with the rules framed by the Central Government in terms of Section 29 of the Regional Rural Banks Act. Regulation 14 deals with promotions and thereunder all promotions shall be made at the discretion of the bank and no officer or employee shall claim, as a matter of right, to be promoted to any post or cadre. Under the proviso thereunder, promotion of officers or employees of the bank shall be made in accordance with the rules framed by the Central Government in terms of Section 29 of the Act. Regulation 38 prescribes the penalties which are classified as minor and major penalties. The minor penalties are 1) Censure 2) withholding or stoppage of increments of pay with, or without, cumulative effect and 3) withholding of promotion.

While it is true that withholding of promotion is also one of the minor punishments which can be imposed for proved misconduct, we are not pursuaded to accept the submission of Sri Ghanta Rama Rao, learned Counsel for the petitioner, that since the petitioner was not imposed the punishment of withholding of promotion, he could not be denied promotion. As has been held by the Apex Court in **Krishnan**[1] and **K.V. Janakiraman**[2], which has been rightly followed by the learned single judge, to punish an employee and at the same time to promote him during the currency of the punishment would be self contradictory. The mere fact that the petitioner was not imposed the punishment of withholding of promotion would not automatically entitle him to be

promoted to the next higher post of Officer Grade-III.

In this context it is also necessary to note that the respondent bank, vide its circular dated 08.06.2005, had proposed to fill up six vacancies in MMGS III cadre by promotion from MMGS II cadre. The promotion process was required to be carried out in accordance with the RRB (Appointment and Promotion of Officers and other Employees) Rules, 1998 and the extant guidelines of the Government of India, NABARD etc in this regard. Selection was to be on the basis of "seniority-cum merit". Amongst the prescribed eligibility criteria is that officers, holding the post for seven years in MMGS-II cadre on a regular basis, shall be considered for promotion to MMGS III posts. The method of selection prescribed was that selections were to be made by the selection committee on the basis of interview and assessment of performance appraisal reports for the preceding five years in Scale II cadre. Clause 6 relates to composition of the selection committee. Clause 8 restricts the zone of consideration to three times the number of vacancies. The selection process for promotion is detailed in Clause 9. The circular provides that final selection would be made on the aggregate marks of performance appraisal and minimum marks obtained in the interview. The bench mark for selection, ie. the minimum marks which would entitle a person to be promoted on the basis of "seniority cum merit", was be determined by the appointing authority i.e., the Chairman of the bank, in consultation with the other members of the selection committee. From out of the list of candidates, who had obtained more than the minimum bench mark, six officers were to be promoted as officers Scale III on the basis of

"seniority-cum-merit", given the necessary merit requisite for efficiency and administration and that a senior, even though less meritorious, would have priority and a comparative assessment of merit was not required to be made provided that there was nothing against the official which made him unsuitable for promotion and he was not suffering from the penalty imposed on him on account of the disciplinary proceedings initiated earlier.

Under Section 3(2) of the Regional Rural Banks Act, 1976, the respondent bank is a body corporate with perpetual succession and a common seal. It has a legal entity distinct from that of its sponsor bank i.e., State Bank of Hyderabad. The power, to appoint its officers and other employees as it considers necessary, has been conferred on the respondent bank under Section 17 (1) of the Regional Rural Banks Act. There is no provision, in the Regional Rural Banks Act or in the Officers and Employees Service Regulations, 1991, which make the circulars/guidelines issued by the sponsor bank, for its employees, applicable to officers and employees of the respondent bank. In any event, no such statutory provision has been brought to our notice. The conclusion arrived at by the learned judge, that there is no provision which prohibited the management from promoting an employee who had suffered a punishment, does not call for interference.

The order of punishment, of withholding of one increment without cumulative effect for a period of three years, has since been modified in appeal to that of "censure". The order of the disciplinary authority merges with the order of the Appellate Authority as appellate proceedings are in continuation of the original proceedings. (**Narinder Mohan Arya Vs. United India**

Insurance Co. Ltd.,[3]). Where an appeal is provided against an order passed by a tribunal, the decision of the Appellate Authority is the operative decision in law. If the Appellate Authority modifies or reverses the decision of the Tribunal, it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal, by the Appellate Authority, the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement. (**CIT Vs. Amritlal Bohgilal & Co.,**[4]).

In **Somnath Sahu v. State of Orissa**[5], the Supreme Court observed:-

"…..The appellant was heard by the State Government in support of his appeal and ultimately the State Government dismissed the appeal in its order dated the January 2, 1962. In these circumstances we are of opinion that the order of Respondent 4 dated the March 11, 1960 has merged in the appellate order of the State Government dated the January 2, 1962 and **it is the appellate decision alone which subsists and is operative in law and is capable of enforcement.** In other words the original decision of Respondent 4 dated the March 11, 1960 no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. **There can be no doubt that if an appeal is provided by a statutory rule against an order passed by a tribunal the decision of the Appellate Authority is the operative decision in law if the Appellate Authority modifies or reverses it. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the Appellate Authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement……" (emphasis supplied).**

The order of the original authority has merged in the order of

the appellate authority and it is the appellate authority's order which is in force and the earlier order of the disciplinary authority has ceased to exist. As such it must be held that the punishment inflicted on the petitioner, in the departmental enquiry held against him, is only that of "censure".

As has been rightly been held by the learned judge, in the absence of any statutory provision which enables the respondent bank not to consider a candidate, who has suffered a penalty, for promotion to the next higher post, the petitioner's case should have been forwarded to the selection committee which would then, both in terms of the Circular dated 08.06.2005 and the Regional Rural Banks (Appointment and Promotions of Officers and other Employees) Rules, 1998, have considered the case of the petitioner for promotion as Officer Gr-III on the basis of "seniority-cum-merit" and on the parameters prescribed for selection. It must, however, not be lost sight of that forwarding the petitioner's name, for consideration for promotion as Officer Gr-III, to the selection Committee would not automatically entitle him to be promoted to the higher post of Officer Gr-III. Since the basis of selection is "seniority-cum-merit", and promotion is not to be effected on the basis of seniority alone, it is only if the selection committee finds that the petitioner possesses the minimum merit required for promotion would he be entitled to be promoted to the next higher post of Officer Gr-III in accordance with his seniority.

In this context reference can usefully be made to the judgment of the Apex Court in **B.V. Sivaiah Vs. K. Addanki Babu**[6], wherein, while examining the question of promotion of officers in regional rural banks, on the principle of "seniority cum merit", the

Supreme Court observed:-

"..... In the matter of formulation of a policy for promotion to a higher post, the two competing principles which are taken into account are inter se seniority and comparative merit of employees who are eligible for promotion. In *Sant Ram Sharma* v. *State of Rajasthan*: AIR 1967 SC 1910 this Court has pointed out that the principle of seniority ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that, if a post falls vacant, it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones. An official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of "seniority-cum-merit" and "merit-cum-seniority" which take into account seniority as well as merit seek to achieve such a balance.

The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in *Union of India* v. *Mohan Lal Capoor*: 1973(2) SCC 836 has said: (SCC p. 856, para 37)

> "[F]or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale."

Similarly, Beg, J. (as the learned Chief Justice then was) has said: (SCC p. 851, para 22)

> "*22*. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant Rules, is that the 'entrance' or 'inclusion' test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor."

On the other hand, as between the two principles of seniority and merit, the criterion of "seniority-cum-merit" lays greater emphasis on seniority. In *State of Mysore* v. *Syed Mahmood*[3] .....while considering Rule 4(3)(*b*) of the Mysore State Civil Services General Recruitment Rules, 1957, which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the Rule required promotion to be made by selection on the basis of "seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion". **It was pointed out that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted……..."**

"…… On behalf of the promoted officers, it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service, seniority can have no bearing and promotion has to be made on a comparative assessment of merit of such officers. We are unable to agree. **While applying the principle of seniority-cum-merit for the purpose of promotion, what is required to be considered is the inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit, seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.**

We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit……." (emphasis supplied)

The circular issued by the respondent bank dated 08.06.2005 provides that a senior, even though less meritorious, shall have priority provided there was nothing against him which made him unsuitable for promotion and he was not suffering from the penalty imposed on account of the disciplinary proceedings initiated earlier. While Sri Ghanta Ramarao, learned Counsel for the petitioner, would submit that "censure" is akin to reprimand and, under the NABARD circular, reprimand is not a bar for promotion, Learned Standing Counsel for the respondent bank, on the other hand, would submit that since "censure" is also one of the penalties prescribed under the Regulations, and as the petitioner has suffered the said penalty, he is not entitled to be promoted as an Officer Gr-III. As noted above, no statutory provision in this regard has been brought to our notice. In any event these are all matters for the selection committee to decide on the basis of the Regional Rural Banks ((Appointment and Promotions of Officers and other Employees) Rules, 1998 and the applicable guidelines of the Government of India and NABARD in this regard. Needless to state that, in case the selection committee is satisfied that the petitioner possesses the minimum merit required for promotion as Officer Gr-III, he shall then be entitled to be promoted on the basis of his seniority in MMGS-II category and, on promotion, he would take his rightful place in the seniority list of Officers Gr-III, above his erstwhile juniors in MMGS-II cadre.

The order of the learned single judge, to the limited extent that the selection of the unofficial respondents was directed not to be interfered with, is set aside. While it is true that no malafides

are attributed to the selection committee, and the unofficial respondents were selected by a duly constituted selection committee, the fact remains that since the basis of selection is "seniority-cum-merit" once a candidate is found to have the minimum merit required for promotion he is entitled to be promoted in his turn on the basis of his seniority. If, on consideration of the petitioner's case, the selection committee finds that he possesses the minimum merit required for promotion, it may necessitate promotion, of one of the earlier selected candidates, being set aside in case he/she is junior to the petitioner herein in MMGS-II cadre. Petitioner would, however, state that Sri M. Prabhakar, respondent No.5 in W.P. No. 12805 of 2005, has since expired and that, as a result, there is a clear vacancy now available in MMGS-III cadre, in which event, even if the petitioner is found suitable for promotions, the promotion already given to the other unofficial respondents may not necessitate interference and it would suffice if the seniority list of Officers Gr-III is appropriately rearranged and the petitioner is given his rightful place in the seniority list of Officers in MMGS-III.

The contention, urged on behalf of the respondent bank, that the learned single judge has erred in directing that the petitioner's case be considered for promotion in the absence of a clear vacancy does not merit acceptance. We are, however, spared the trouble of examining this question any further, since the unfortunate demise of Sri M. Prabhakar, pursuant to an accident on 07.05.2006, has resulted in a vacancy having become available in MMGS-III cadre.

Subject to the above observations, Writ Appeal No. 820 of 2006, preferred by the Petitioner in W.P.No.12805 of 2005 is

allowed and Writ Appeal No. 681 of 2006, filed by the respondent bank in W.P.No.12805 of 2005, is dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

ASP/MRKR

[1] AIR 1992 Supreme Court 1898

[2] AIR 1991 Supreme Court 2010

[3] (2006) 4 SCC 713

[4] 1959 SCR 713

[5] (1969) 3 SCC 384

[6] (1998) 6 SCC 720